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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,073	07/25/2003	Christian Laplace	67505	3498

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EXAMINER	
DURAND, PAUL R	
ART UNIT	**PAPER NUMBER**
3721	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/628,073	LAPLACE, CHRISTIAN	
	Examiner	Art Unit	
	Paul Durand	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 December 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) *13-28* is/are withdrawn from consideration.

5)☒ Claim(s) *29-34* is/are allowed.

6)☒ Claim(s) *1,2,4 and 9-12* is/are rejected.

7)☐ Claim(s) *3 and 5-8* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 13-28 are withdrawn, as previously indicated, from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claim, the phrase upstream extension lacks antecedent basis.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1,2,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middour (US 3,494,265) in view of Forman (US 6,519,917).

In regard to claim 1, Middour discloses the invention substantially as claimed a including forming a film around a filling tube 11, folding a first longitudinal edge around a first wing in the form of ear 17, folding a second longitudinal edge around a second wing in the form of ear 18, as the film is fed in the film feed direction (see Figs. 1-4). What Middour does not disclose is the obtuse angle of the entrance surface and the longitudinal axis of the folding tunnel. However, Forman teaches that it is old and well known in the art of VFFS machine to provide an obtuse angle between the entrance portion (generally indicated at 23) and the folding tube (generally indicated by 21) for the purpose of continuously moving a film through a manufacturing process (See figs.1 and 2). Therefore, it would have been obvious to on having ordinary skill in the art at the time the invention as made to have provided the invention of Middour with the manufacturing angle as taught by Forman for the purpose of continuously moving a film through a manufacturing process.

In regard to claim 2, Middour discloses the invention substantially as claimed including a fill tube 11 for filling a package with material (see Fig.1 and C3,L6-12). What Middour does not specifically disclose is the filling of the formed package with food. However, the examiner takes Official Notice that it is old and well known in the art of VFFS to fill a package with food for the purpose of increasing manufacturing throughput. Therefore, it would have been obvious to on having ordinary skill in the art at the time the invention as made to have specifically provided the invention of Middour with food for the purpose of increasing manufacturing throughput.

In regard to claim 9, Middour disclose the invention substantially as claimed except for the specific thickness of the film. However, it would have been obvious to one having ordinary skill in the at the time the invention was made to have provided a film with a thickness of 0.0014", since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272,205,USPQ 215 (CCPA 1980). Therefore, it would have been obvious to on having ordinary skill in the art at the time the invention as made to have specifically provided the invention of Middour with a preselected film thickness for the purpose of increasing packaging efficiency.

In regard to claim 10, the modified invention of Middour discloses the invention substantially as claimed except for specific use of a flowable product. However, the examiner takes Official Notice that it is old and well known in the art of filling to provide a VFFS machine with a flowable product for the purpose of increasing manufacturing throughput. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Middour with a flowable product for the purpose of increasing manufacturing throughput.

6. Claims 1,2,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middour (US 3,494,265) in view of Kreager (US 4,517,790).

In regard to claim 1, Middour discloses the invention substantially as claimed a including forming a film around a filling tube 11, folding a first longitudinal edge around a first wing in the form of ear 17, folding a second longitudinal edge around a second wing in the form of ear 18, as the film is fed in the film feed direction (see Figs. 1-4). What

Middour does not disclose is the obtuse angle of the entrance surface and the longitudinal axis of the folding tunnel. However, Kreager teaches that it is old and well known in the art of VFFS machine to provide an acute angle, which is also obtuse 90 degrees the other way between the entrance portion (generally indicated at 38) and the longitudinal axis of the folding tube (generally indicated by 42) for the purpose of continuously moving a film through a manufacturing process (See fig.1 and C3,L13-40). Therefore, it would have been obvious to on having ordinary skill in the art at the time the invention as made to have provided the invention of Middour with the manufacturing angle as taught by Kreager for the purpose of continuously moving a film through a manufacturing process.

In regard to claim 2, Middour discloses the invention substantially as claimed including a fill tube 11 for filling a package with material (see Fig.1 and C3,L6-12). What Middour does not specifically disclose is the filling of the formed package with food. However, the examiner takes Official Notice that it is old and well known in the art of VFFS to fill a package with food for the purpose of increasing manufacturing throughput. (See fig.1 and C3,L13-40). Therefore, it would have been obvious to on having ordinary skill in the art at the time the invention as made to have specifically provided the invention of Middour with food for the purpose of increasing manufacturing throughput.

In regard to claim 9, Middour disclose the invention substantially as claimed except for the specific thickness of the film. However, it would have been obvious to one having ordinary skill in the at the time the invention was made to have provided a film with a thickness of 0.0014", since it has been held that discovering an optimum

value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272,205,USPQ 215 (CCPA 1980).). Therefore, it would have been obvious to on having ordinary skill in the art at the time the invention as made to have specifically provided the invention of Middour with a preselected film thickness for the purpose of increasing packaging efficiency.

In regard to claim 10, the modified invention of Middour discloses the invention substantially as claimed except for specific use of a flowable product. However, the examiner takes Official Notice that it is old and well known in the art of filling to provide a VFFS machine with a flowable product for the purpose of increasing manufacturing throughput. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the modified invention of Middour with a flowable product for the purpose of increasing manufacturing throughput.

7. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middour and Kreager in further view of Pepmeir (US 3,838,549).

The modified invention of Middour discloses the invention substantially as claimed except for specific use of a flowable product. However, Pepmeir teaches that it is old and well known in the art of VFFS packaging to have a flowable product in the form of cheese, which is continuously packaged for the purpose of increasing manufacturing throughput. Furthermore in regard to the manufacturing capacity of claim 12, while the modified invention of Middour does not disclose specific manufacturing throughput capacity, It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a manufacturing throughput of

3000 slices per minute, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272,205,USPQ 215 (CCPA 1980). Therefore, it would have been obvious tone having ordinary skill in the art at the time the invention was made to have provided the modified invention of Middour with means to process a flowable cheese product as taught by Pepmeir for the purpose of increasing manufacturing throughput.

Allowable Subject Matter

8. Claims are 29-34 allowed.

9. Claims 3 and 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 12/2/2004 have been fully considered but they are not persuasive.

Applicant argues that the combination of Middour and Kramer do not teach an entrance portion that is orientated at an obtuse angle. The examiner disagrees with this. As stated above the teaching of Kramer shows the entrance portion of the device at an acute angle to the longitudinal axis of the folding tunnel. However, given the

broadest reasonable interpretation of the claims and the use of the limitation axis, the examiner asserts that the angle between the longitudinal axis and the entrance portion can also be measured 90 degrees in the other direction. Further, the new teaching of Forman is also supplied to show applicant that the obtuse angle is well known.

Therefore for the reasons indicated above, the rejection is deemed proper.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
March 1, 2005

Stephen F. Gerrity
Primary Examiner